

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP  
 808 WILSHIRE BOULEVARD, 3<sup>RD</sup> FLOOR  
 SANTA MONICA, CALIFORNIA 90401  
 TEL 310.566.9800 • FAX 310.566.9850

1 ROPES & GRAY LLP  
 THAD A. DAVIS (SBN 220503)  
 2 thad.davis@ropesgray.com  
 Three Embarcadero Center  
 3 San Francisco, CA 94111-4006  
 Telephone: 415.315.6300  
 4 Facsimile: 415.315.6350

5 ROPES & GRAY LLP  
 PETER M. BRODY (*pro hac vice*)  
 6 peter.brody@ropesgray.com  
 MARIEL GOETZ (*pro hac vice*)  
 7 mariel.goetz@ropesgray.com  
 700 12<sup>th</sup> Street, NW, Suite 900  
 8 Washington, DC 20005-3948  
 Telephone: 202.508.4612  
 9 Facsimile: 202.383.7777

10 KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP  
 MICHAEL J. KUMP (SBN 100983)  
 11 mkump@kwikalaw.com  
 LAURA D CASTNER (SBN 172362)  
 12 lcastner@kwikalaw.com  
 808 Wilshire Boulevard, 3<sup>rd</sup> Floor  
 13 Santa Monica, California 90401  
 Telephone: 310.566.9800  
 14 Facsimile: 310.566.9850

15 Attorneys for Counterclaim Defendant  
 KIMBERLY KARDASHIAN

17 UNITED STATES DISTRICT COURT  
 18 NORTHERN DISTRICT OF CALIFORNIA  
 19 SAN FRANCISCO DIVISION

20 TRIA BEAUTY, INC., Plaintiff,

21 vs.

22 RADIANCY, INC., Defendant.

23 RADIANCY, INC., Counterclaim Plaintiff,

24 vs.

25 TRIA BEAUTY, INC., Counterclaim  
 26 Defendant, and

27 KIMBERLY KARDASHIAN,

28 Counterclaim Defendant.

Case No. CV-10-5030 RS  
 Honorable Richard Seeborg

**DECLARATION OF LAURA D.  
 CASTNER IN SUPPORT OF  
 KIMBERLY KARDASHIAN'S MOTION  
 FOR SUMMARY JUDGMENT, OR IN  
 THE ALTERNATIVE, PARTIAL  
 SUMMARY JUDGMENT**

Date: May 10, 2012  
 Time: 1:30 p.m.  
 Crtm.: No. 3, 17th Floor

## DECLARATION OF LAURA D. CASTNER

I, Laura D. Castner, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am Of Counsel to Kinsella Weitzman Iser Kump & Aldisert LLP, attorneys of record for Counterclaim-Defendant Kimberly Kardashian. If called as a witness, I could and would competently testify to all the facts within my personal knowledge except where stated upon information and belief.

2. Attached hereto as **Composite Exhibit A** are true and correct copies of excerpts from the deposition transcript of Kimberly Kardashian, taken on January 18, 2012, and a true and correct copy of a letter dated March 8, 2012 from me to Brendan O'Rourke, counsel for Radiancy, Inc., listing Ms. Kardashian's errata to her deposition and enclosing her signature page. Ms. Kardashian is waiving the confidentiality designation as to the attached pages of the deposition transcript.

3. Attached hereto as **Exhibit B** are true and correct copies of excerpts from the deposition transcript of Dolev Rafaeli, taken on January 25, 2012. Radiancy has waived the confidentiality designation as to the attached pages of the deposition transcript.

4. Attached hereto as **Exhibit C** is a true and correct copy of this Court's Order dated September 6, 2011.

5. Attached hereto as **Exhibit D** is a true and correct excerpt from Radiancy, Inc.'s First Set of Interrogatories to Ms. Kardashian, dated October 13, 2011.

6. Attached hereto as **Exhibit E** is a true and correct excerpt from Kimberly Kardashian's verified responses to Radiancy, Inc.'s First Set of Interrogatories, dated December 19, 2011.

7. Attached hereto as **Exhibit F** is a true and correct copy of Radiancy, Inc.'s Amended Initial Disclosures pursuant to Fed. R. Civ. P. 26(a), dated February 16, 2012.

1           8. Attached hereto as **Exhibit G** is a true and correct copy of a page  
 2 which I printed on March 28, 2012 from the [www.trytrialaser.com](http://www.trytrialaser.com) website,  
 3 <http://www.trytrialaser.com/whytria.htm>.

4           9. Attached hereto as **Exhibit H** is a true and correct copy of an email  
 5 chain dated December 10-13, 2010, between Elizabeth Campos of Boulevard  
 6 Management, Ms. Kardashian's management company, Mark Rothman of Platinum  
 7 Rye Entertainment, Dennis Roach (Ms. Kardashian's attorney), Megan Driscoll of  
 8 Behrman Communications (plaintiff TRIA, Inc.'s public relations company),  
 9 Lisandra DuFort (the former assistant to Ms. Kardashian's mother and manager,  
 10 Kris Jenner), and others, which was produced on behalf of Ms. Kardashian in this  
 11 action and bears Bates numbers K00427-K00428. Ms. Kardashian is waiving the  
 12 confidentiality designation as to the attached document.

13           10. Attached hereto as **Exhibit I** is a true and correct copy of an email  
 14 dated October 12, 2010, from Mark Rothman of Platinum Rye Entertainment to  
 15 Lindsay May and Kris Jenner, with a copy to Lisandra DuFort (Mrs. Jenner's  
 16 assistant), which was produced on behalf of Ms. Kardashian in this action and bears  
 17 Bates numbers K00497-K00498. Ms. Kardashian is waiving the confidentiality  
 18 designation as to the attached document.

19           11. Attached hereto as **Exhibit J** is a true and correct copy of the product  
 20 instructions for the TRIA Beauty Laser Hair Removal System, which were produced  
 21 by TRIA in discovery in this action, with Bates numbers TBI-00364298 – TBI-  
 22 00364324. TRIA has waived the confidentiality designation as to the attached  
 23 document.

24           12. Attached hereto as **Exhibit K** is a true and correct copy of a study of  
 25 the original TRIA Beauty Laser Hair Removal System, entitled "Simulated  
 26 Consumer Use of a Battery-Powered, Hand-Held, Portable Diode Laser (810 nm)  
 27 for Hair Removal: A Safety, Efficacy and Ease-of –Use Study," by Professor  
 28 Ronald G. Wheeland of the University of Missouri-Columbia, published in 2007 in

1 39 *Lasers in Surgery and Medicine*, 476-493. The study was produced by TRIA in  
2 discovery in this action, with Bates numbers TBI-00145456 - TBI-00145473. TRIA  
3 has waived the confidentiality designation as to the attached document.

4 13. Radiancy has not produced any consumer survey or served any expert  
5 report regarding consumer perception of Ms. Kardashian's statements.

6  
7 I declare under penalty of perjury under the laws of the United States of  
8 America that the foregoing is true and correct.

9 Executed April 5, 2012, at Santa Monica, California.

10  
11 

12 Laura D. Castner  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28